

FILED

AUGUST 3, 1979

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO. H-78-5104

In the Matter of the Suspension :
or Revocation of the License of :
LEONARD ACKERMAN, D.C. :

To Practice Chiropractic in the :
State of New Jersey :

Administrative Action

FINAL ORDER
OF
SUSPENSION

This matter was opened to the State Board of Medical Examiners by Complaint filed January 18, 1979, by John J. Degnan, Attorney General of New Jersey by Joan D. Gelber, Deputy Attorney General, appearing, and duly served upon respondent January 29, 1979. The Complaint alleged in two Counts that respondent had solicited patients on numerous occasions in a manner violating the extant portions of N.J.S.A. 45:9-16(j), paragraph 2, subsections (a), (b), (e) and (f) and, in addition, alleged that the statements contained in certain solicitations (attached as exhibits to the Complaint, S-1) were fraudulent and were calculated to mislead or deceive the public in that services were proffered which are beyond the scope of chiropractic and were services which respondent is not licensed to perform.

Respondent filed his Answer, R-1, on January 30, 1979, indicating that he did not wish to contest the charges stated. As the charges were not contested, the matter was heard by a Board Committee whose proposed findings of fact and recommendation for revocation were reviewed in light of the full transcript of the proceedings. On March 21, 1979, he appeared pro se, availing himself of the opportunity

to address the Board Committee in mitigation of any penalty that might be imposed in the event the Board found the charges proven.

At said hearing, the Board reviewed all the exhibits, respondent having acknowledged responsibility for all. Review of the material demonstrates that respondent has offered to perform acupuncture although he is not licensed pursuant to N.J.S.A. 45:9B-6 (Exhibit G); unlicensed marriage, psychological and job counselling (Exhibit C); unlicensed prescription of nutritional supplements to treat specific complaints of patients (Exhibit J); and treatment for "incurable ailments" (Exhibit K). In addition, he has offered to treat by "chiropractic, acupuncture and nutrition" numerous ailments which the Board of Medical Examiners, by exercise of its professional expertise as well as the clear wording of N.J.S.A. 45:9-14.5 recognizes as beyond the statutory scope of chiropractic, e.g. eczema, hives, psoriasis, tics, dizziness, loss of memory, tinitis, diarrhea, ulcer, colitis, palpitations, angina, heart beat abnormalities, asthma, emphysema, bedwetting, impotence, pain in "any part of the body", insomnia, depression, obsessive-compulsivity, phobias, stuttering, excessive grief, fear, timidity. All of the above -- a mere sampling of respondent's advertisement s -- clearly require substantial if not exclusive medical and psychological treatment of a highly skilled nature; patients may delay seeking appropriate professional assistance if deluded by respondent's misrepresentations.

In addition, respondent has solicited fee schemes designed to coerce persons to pay him for bi-weekly "adjustments" when they have no complaint whatsoever (Exhibit D-2). Similar solicitations were distributed to business persons, citing names of well-known

personalities, to induce entire companies to sign up employees for "chiropractic preventive maintenance care." (Exhibit D-1).

Respondent's flyers have been distributed by runners (Exhibit B) at bus stops (Exhibit G), on automobile windshields (Exhibit H), inside private mailboxes (Exhibit I), and stapled to newspapers (Exhibit F).

His advertisements do not concern a standardized service and do not provide information helpful to informed decision making. It is significant that as early as January 1973 he acknowledged (Exhibit A) the Board's express warning to him that his advertisements were violating the relevant statutes by virtue of their false and misleading character. Notwithstanding the passage since that date of N.J.A.C. 13:35-6.13, which substantially expands the range of advertising permissible to a licensee of the Medical Board, respondent's solicitation are still wide of the expanded allowable boundaries.

CONCLUSIONS OF LAW

Solicitation by use of material similar to that distributed by respondent was found fraudulent and calculated to mislead and deceive the public by this Board in In re Blum. The Board's Order of Revocation was affirmed by the Appellate Division at 109 N.J. Super. 125 (App.Div.1970). As did the Board and the Court in that case, this Board finds proof of respondent's fraudulent intent by his conduct in the circumstances of the substantive content and distribution of the advertisement; the Board is further satisfied that by an overwhelming preponderance of the evidence these ads were calculated to

persuade the public to avoid medical attention and treatment in cases where such treatment was needed and which are beyond the limited scope of the practice of chiropractic. In re De Marco, _____ N.J. Super. _____ (App. Div. A-2321-77) 1979.

N.J.S.A. 45:9-14.5 defines the practice of chiropractic as "a system of adjusting the articulations of the spinal column by manipulation thereof." A licensed chiropractor shall have the right in the examination of patients to use the neurocalometer, X-ray and other necessary instruments solely for the purpose of diagnosis or analysis. No licensed chiropractor shall use endoscopic or cutting instruments, or prescribe, administer or perform surgical operations except adjustment of the articulations of the spinal column.

Misrepresentations beyond the scope of licensed practice were considered in In re Blum, supra, at 131, Abelson's, Inc. v. N.J. State Bd. of Optometrists, 5 N.J. 412 (1950); State v. Costa, 11 N.J. 239, 247 (1953).

A similar situation was considered by the courts in Talsky v. Dept. of Registration and Ed., 370 N.E.2d 173 (S.Ct. Ill. 1977). The advertisements of chiropractor Talsky referred to "open houses," names of famous persons, "preventive maintenance" adjustments, among other forms of prohibited solicitation. The court in affirming disciplinary sanction by the professional board noted that

"advertising which is false, deceptive or misleading is subject to restraint and...that "the leeway for untruthful or misleading expression that has been allowed in other contexts has little force in the commercial arena.'" Talsky, supra, at 178, quoting Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976).

The Talsky court further considered Bates v. State Bar, 433 U.S. 350 (1977) and went on to note:

"There can be no question about the fact that advertising by those engaged in the profession of treating bodily ills involves different considerations and risks than are involved in advertising by others. The availability of proper medical attention at the right time and from the right source obviously is of critical importance. The natural and compelling urge to maintain good health and to find a cure for disease renders people particularly susceptible to advertising which suggests a means to accomplish these objectives. The potential to mislead is great and it is apparent that the State has a very real and compelling interest in restricting the advertising of health care services to those which are truthful, informative and helpful to the potential consumer." Talsky, at 178 179.

The advertisements distributed by respondent are therefore found to be false, fraudulent and misleading and in addition, beyond the scope of chiropractic.

IT IS THEREFORE on this **18** day of July 1979

ORDERED:

1. Respondent's license to practice chiropractic in the State of New Jersey be and it is hereby suspended for two (2) years, the first six months of which shall be active and the balance shall be a period of probation;

2. Respondent shall forthwith surrender his license to this board and cease and desist the practice of chiropractic during the period of active suspension;

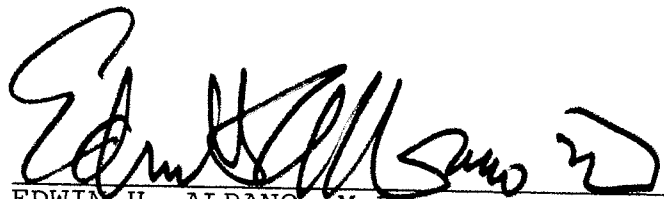
3. Respondent is hereby assessed a penalty of \$200.00 pursuant to N.J.S.A. 45:9-22, payable to the State Board of Medical Examiners within ten (10) days from the effective date of the Order;

and it is further

ORDERED:

That the New Jersey State Board of Medical Examiners is hereby and herein empowered to issue an Order To Show Cause in seven (7) days notice should information come to its attention that any of the terms and conditions of the herein Order have been violated and the Board may immediately issue an Order of Temporary Suspension prior to the return date of the Order To Show Cause providing that leave be and it is hereby granted to allow respondents to move to modify any such Order of Temporary Suspension issued on no less than two (2) days' notice to the State Board.

THIS ORDER SHALL BE EFFECTIVE FOURTEEN (14) DAYS AFTER FILING.

A handwritten signature in black ink, appearing to read 'Edwin H. Albano', with a stylized flourish at the end.

EDWIN H. ALBANO, M.D.
PRESIDENT
STATE BOARD OF MEDICAL EXAMINERS